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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel, )  
4 W.A. DREW EDMONDSON, in his )  
5 capacity as ATTORNEY GENERAL )  
6 OF THE STATE OF OKLAHOMA, )  
7 et al. )  
8 Plaintiffs, )  
9 V. ) No. 05-CV-329-GKF-SAJ  
10 TYSON FOODS, INC., et al., )  
11 Defendants. )

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
13 MARCH 3, 2008  
14 PRELIMINARY INJUNCTION HEARING  
15 VOLUME V

16 BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

17 APPEARANCES:

18 For the Plaintiffs: Mr. Drew Edmondson  
19 Attorney General  
20 Mr. Robert Nance  
21 Mr. Daniel Lennington  
22 Ms. Kelly Hunter Burch  
23 Mr. Trevor Hammons  
24 Assistant Attorneys General  
25 313 N.E. 21st Street  
Oklahoma City, Oklahoma 73105

Glen R. Dorrough  
UNITED STATES COURT REPORTER

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1 (APPEARANCES CONTINUED)

2 For the Plaintiffs: Mr. David Riggs  
3 Mr. David P. Page  
4 Mr. Richard T. Garren  
5 Ms. Sharon Gentry  
6 Riggs Abney Neal Turpen  
7 Orbison & Lewis  
8 502 West 6th Street  
9 Tulsa, Oklahoma 74119

10 Mr. Louis W. Bullock  
11 Bullock Bullock & Blakemore  
12 110 West 7th Street  
13 Suite 770  
14 Tulsa, Oklahoma 74119

15 Mr. Frederick C. Baker  
16 Ms. Elizabeth Claire Xidis  
17 Motley Rice LLC  
18 28 Bridgeside  
19 P. O. Box 1792  
20 Mount Pleasant, South Carolina 29465

21 For the Tyson Foods  
22 Defendants: Mr. Robert W. George  
23 Kutak Rock LLP  
24 The Three Sisters Building.  
25 214 West Dickson Street  
Fayetteville, Arkansas 72701

Mr. Jay T. Jorgensen  
Sidley Austin LLP  
1501 K Street NW  
Washington, D.C. 20005

Mr. Patrick M. Ryan  
Ryan Whaley Coldron Shandy, PC  
119 North Robinson, Suite 900  
Oklahoma City, Oklahoma 73102

21 For the Cargill  
22 Defendants: Mr. John H. Tucker  
23 Ms. Leslie Southerland  
24 Rhodes Hieronymus Jones  
25 Tucker & Gable  
100 West 5th Street  
Suite 400  
Tulsa, Oklahoma 74103

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1 (APPEARANCES CONTINUED)

2 For the Cargill Mr. Delmar R. Ehrich  
3 Defendants: Mr. Bruce Jones  
4 Faegre & Benson  
90 South 7th Street, Suite 2200  
Minneapolis, Minnesota 55402

5 For the Defendant Mr. John Elrod  
6 Simmons Foods: Ms. Vicki Bronson  
7 Conner & Winters  
8 Attorneys at Law  
211 East Dickson Street  
Fayetteville, Arkansas 72701

9 For the Defendant Mr. A. Scott McDaniel  
10 Peterson Farms: Mr. Philip Hixon  
11 Ms. Nicole Longwell  
McDaniel Hixon Longwell & Acord PLLC  
320 South Boston, Suite 700  
Tulsa, Oklahoma 74103

12 For the George's Mr. Woodson Bassett  
13 Defendants: Mr. James M. Graves  
14 Mr. Paul E. Thompson  
The Bassett Law Firm  
Post Office Box 3618  
Fayetteville, Arkansas 72701

15 For the Cal-Maine Mr. Robert F. Sanders  
16 Defendants: Young Williams P.A.  
17 P. O. Box 23059  
Jackson, Mississippi 39225

18 Mr. Robert P. Redemann  
19 Perrine McGivern Redemann  
20 Reid Berry & Taylor PLLC  
Post Office Box 1710  
Tulsa, Oklahoma 74101

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23 THE COURT: Please be seated. Do I understand  
24 correctly that the plaintiffs are prepared to put on their  
25 witness out of time?

EXHIBIT

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1 technologies, there's been a great deal of discussion about  
2 expanding and improving these standards, but to date they  
3 continue to be the reference standard used throughout the  
4 country.

5 Q. The World Health Organization in 2003 questioned whether  
6 the standards are appropriate when animal waste is a factor.  
7 Do you agree with that conclusion?

8 A. I don't agree with that because the World Health  
9 Organization in their comment in 2003 was reflecting the  
10 reality in many of the low income and middle income countries  
11 around the world where we continue to see very high levels of  
12 waterborne disease, mostly because of inadequate sanitation.  
13 About 1.2 billion people in the world do not have modern  
14 sanitation. So sewage or direct deposition of human feces into  
15 waterways that are subsequently used for drinking purposes  
16 tends to make the WHO view of the world look very different  
17 from what the EPA or scientists who are based in a high income  
18 country such as the United States.

19 Q. The EPA commissioned a study in 2007 that questioned the  
20 standards animal versus human waste. Do you agree with the  
21 findings of that study?

22 A. I think that what EPA was really raising in that study --  
23 it was not a study that led to a recommendation to change these  
24 standards that we've been talking about, but rather they were  
25 part of an early House conference subsequently followed up to

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1 explore new and improved methods of source tracking. So I  
2 think that it's not, in my view, a really fair representation  
3 of EPA's work to say that they have questioned these freshwater  
4 recreational standards from the point of view of both animal  
5 and human waste.

6 Q. As of 2007, the charts that you talked about, demonstrated  
7 and identified, are they still the standards expressed by the  
8 Environmental Protection Agency?

9 A. They continue to be the standards used, yes.

10 Q. And the same answer as to 2008?

11 A. Yes.

12 Q. And how do we determine whether or not these standards are  
13 being exceeded?

14 A. By taking samples using standard protocols and then having  
15 those standards tested at a certified laboratory.

16 Q. I invite your attention to State's Exhibit 26 which is on  
17 the screen. Can you tell me what that is, please, if you know?

18 A. It's a map of the Illinois River Watershed with a dark  
19 diagonal line that I assume is the Arkansas-Oklahoma boundary  
20 running from top left to bottom right.

21 Q. And what does that purport to show?

22 A. It shows sampling sites for bacterial data along the  
23 Illinois River and its major tributaries.

24 Q. Let me now invite your attention to State's Exhibit 407.  
25 Can you tell me, please, what that is?

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1 A. This is a synopsis of bacteria recovered from the Illinois  
2 River Watershed at a number of sites that are identified in the  
3 column on the left, such as Sager Creek, 4.2 miles, Flint  
4 Creek, 7.8 miles, and so forth. For each of these sampling  
5 sites, we have data about some of the indicators we've been  
6 talking about, Enterococci, E. coli, fecal coliforms, with a  
7 column, the third column from the left showing the geometric  
8 mean, the dates of the sample. And then further on the  
9 right-hand side, we have the single point criteria, also from  
10 the same locations of sampling.

11 Q. In regard to threat to human health, do the data on  
12 State's Exhibit 407 cause you any concern, Doctor?

13 A. They cause me a great deal of concern because consistently  
14 the geometric means exceed the EPA water guidelines.

15 Q. And do you have any reaction when testing shows  
16 exceedances six times the operative level or thirteen times the  
17 standard set by EPA?

18 A. Yes, we are now in that rapidly accelerating portion of  
19 the S-shaped curve we discussed shortly ago. And we --  
20 unfortunately the correlation that EPA used was restricted to  
21 the linear portion because they did not feel it was appropriate  
22 to try to quantify these kinds of gross exceedances.

23 Q. In regard to State's Exhibit 407, is there any other  
24 significant finding that you would note for the record?

25 A. Well, I would say that the exceedances are both for

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1 Enterococci and E. coli when using the geometric mean. And  
2 then in the right-hand part of the chart, there are a number of  
3 places where the single point estimates again show exceedances.  
4 Some of them are three times over the standard. One of them is  
5 14 times over the standard, five over the standard. These all  
6 indicate significant bacterial contamination of the Illinois  
7 River Watershed.

8 Q. And in your opinion, do these exceedances have  
9 ramifications as to human health?

10 A. They have important ramifications. Based on the  
11 epidemiologic data we've been talking about, I would expect  
12 there to have been a significant number of people coming down  
13 with gastrointestinal disease as a result of exposure to  
14 recreational use of these waters.

15 Q. How would gastrointestinal disease manifest?

16 A. Well, the incubation time for the common forms,  
17 Salmonella, Campylobacter, vary a little bit. But usually  
18 three to seven or eight days after exposure to the source of  
19 bacteria, a person would develop fever, nausea, vomiting,  
20 diarrhea. And in a small subset of that population, they might  
21 go on to much more serious illness including bloody diarrhea.  
22 And in the case of enteropathogenic E. coli, they might develop  
23 what is called the hemolytic uremic syndrome which can actually  
24 cause death.

25 Q. Dr. Lawrence, let me invite your attention first to